

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MARVIN L. SMITH,

Petitioner,

v.

CIVIL ACTION NO. 1:07CV67
(Judge Keeley)

WARDEN WILLIAM HAINES,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

I. BACKGROUND

On May 17, 2007, Marvin L. Smith ("Smith"), the *pro se* petitioner, filed an Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241. The motion was referred to United States Magistrate Judge James E. Seibert for initial review. On May 14, 2008, the Magistrate Judge entered a Report and Recommendations ("R&R") recommending that this Court grant the respondent's motion to dismiss, dismiss those claims involving good conduct time with prejudice, dismiss those claims involving parole revocation without prejudice, and deny Smith's motion to dismiss as moot. On May 27, 2008, Smith filed objections to the R&R.

This Court reviews any objections to the Report and Recommendation de novo but may adopt any parts of the R&R not objected to without detailed review. Smith's failure to object to

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the recommendation on an issue results in the waiver of his appellate rights on that issue.

II. ANALYSIS

Reviewing the statutory and case law de novo, the Court finds that the Magistrate Judge properly applied the controlling legal standard from 28 U.S.C. § 2244(d)(1) in determining that Smith failed to assert his claims related to good conduct time within the applicable statute of limitations. The Magistrate Judge also correctly applied the controlling legal standard from Preiser v. Rodriguez, 411 U.S. 475, 484 (1973), to determine that Smith failed to exhaust his state judicial remedies as to his claims relating to his parole revocation.

Consequently, this Court **ADOPTS** Magistrate Judge Seibert's Report and Recommendation in its entirety (dkt. no. 23), **GRANTS** the respondent's motion to dismiss (dkt. no. 15), **DISMISSES** the claims related to good conduct time **WITH PREJUDICE**, **DISMISSES** the claims related to parole revocation **WITHOUT PREJUDICE**, and **DENIES** Smith's motion to dismiss **AS MOOT** (dkt. no. 22). The Clerk is ordered to **STRIKE** this case from the Court's docket.

It is so **ORDERED**.

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The Clerk is directed to mail a copy of this Order to the petitioner by registered mail, return receipt requested.

Dated: June 24, 2008.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE